STATE OF MICHIGAN

COURT OF APPEALS

In re CRUZ, Minors.

UNPUBLISHED
September 14, 2017

No. 337297; 337298
St. Joseph Circuit Court
Family Division
LC No. 2016-000488-NA

Before: TALBOT, C.J., and O'CONNELL and CAMERON, JJ.

PER CURIAM.

The trial court entered an order terminating respondent-father's parental rights to JDC, ZMSC, and RLC under MCL 712A.19b(3)(b)(*i*) (parent abused child), (b)(*ii*) (parent failed to prevent abuse), (g) (parent failed to provide proper care and custody), (j) (child would likely be harmed if returned to the parent), and (k)(*iii*) (parent seriously abused child). The order also terminated respondent-mother's parental rights to all three children under MCL 712A.19b(3)(b)(*i*), (g), (j), and (k)(*iii*). Both respondents appeal as of right. We previously consolidated the appeals.[1] We now affirm.

I. FACTUAL BACKGROUND

Respondents are married and are the legal parents of JDC, ZMSC, and RLC.

The family has a child protective services (CPS) history. CPS investigator Joanna McKinney testified that respondent-mother was substantiated for physical abuse of JDC in 2015 when she left a "slap handprint" and "scratches on his face." Respondent-mother received services addressing parenting skills and proper discipline. McKinney explained that respondents were separated at the time, but she informed respondent-father that he was responsible for JDC's protection.

The instant case began in 2016 when ZMSC sustained injury to her head and leg. Dr. Sharif Allibalogun testified that respondent-mother and her mother, ZMSC's maternal grandmother, brought ZMSC into the emergency room in the evening claiming that ZMSC had

[1] *In re Cruz Minors*, unpublished order of the Court of Appeals, entered March 17, 2017 (Docket Nos. 337297; 337298).

fallen, would not stop crying, and may have a head injury. Dr. Allibalogun saw a small contusion on ZMSC's forehead and found her extremities to be normal. However, the maternal grandmother testified that Dr. Allibalogun did not examine ZMSC's legs. Dr. Allibalogun testified that be prescribed a pain medication, told RM to seek follow up care, and told RM that she could return with ZMSC if her condition did not improve.

Dr. Eliezer Melendez testified that RM brought ZMSC to see him the following morning, claiming that she had "dropped" ZMSC from the sofa the day before. Dr. Melendez examined ZMSC's right leg and felt a broken bone almost immediately. An x-ray revealed a broken femur. Dr. Melendez described the fracture as "highly suspicious" because "tremendous force" would be required "to cause this kind of trauma" in a child ZMSC's age. Accordingly, Dr. Melendez reported the injury to CPS.

McKinney testified that she met respondent-mother at the hospital. Initially, respondent-mother stated that she dropped ZMSC accidentally. However, respondent-mother's story changed during an interview that afternoon. In the afternoon, respondent-mother stated that the injury happened earlier than initially reported, that other family members were home, and that ZMSC fell from a greater height.

Dr. Sarah Brown, a child-abuse pediatric-pediatrician, testified that she reviewed ZMSC's x-rays and medical records and determined that ZMSC sustained a "fresh or acute transverse femur fracture." Dr. Brown explained that this type of fracture in a child ZMSC's age "is very highly correlated with abuse" absent some "form of major trauma." Dr. Brown further explained that a fall would not typically provide enough force to cause the injury.

Detective Todd Petersen testified that he went to respondent-mother's home for a reenactment of the injury. Respondent-mother then stated that ZMSC fell from respondent-mother's hip onto her face, when two other family members were asleep in the home, but respondent-father was not home.

A few months later, Detective Petersen interviewed respondent-mother again. Detective Petersen told respondent-mother that he did not believe her story because it was not consistent with the doctor's opinions about the cause of the injury. Respondent-mother's story again changed. According to Detective Petersen, respondent-mother stated that she was "stressed," "lost-her temper," picked ZMSC up "too quick and too fast," and "thr[ew ZMSC] over her shoulder and onto the ground," not seeing exactly how she fell.

Respondent-father believed ZMSC injured herself in an accidental fall. He testified that, on the date of the incident, he came home from work, ZMSC was crying abnormally, and respondent-mother informed him that ZMSC fell. He stayed home with JDC while respondent-mother took ZMSC to the hospital, called to check on her, and then went to sleep. He was asleep when ZMSC came home, but heard her cry during the night. ZMSC was still crying when he woke up the next morning. He tried to calm her down, but could not. Respondent-mother stated that she would take ZMSC to the doctor, so he went to work. He learned about ZMSC's broken leg while he was at work and then went to be with his daughter at the hospital.

The Department of Health and Human Services (DHHS) petitioned to remove JDC and ZMSC from respondents' care and terminate respondents' parental rights. RLC was born after DHHS filed the petition. Therefore, DHHS filed a supplemental petition seeking his removal and termination of respondents' parental rights. The trial court appointed a lawyer-guardian ad litem (LGAL) for the children. Ultimately, the trial court terminated respondents' parental rights to all three children.

II. STANDARD OF REVIEW

We review a trial court's factual findings, determination that a statutory ground for termination has been proven, and decisions regarding children's best interests for clear error. *In re White*, 303 Mich App 701, 709, 713; 846 NW2d 61 (2014). A finding or determination is clearly erroneous if we have a definite and firm conviction that the trial court made a mistake. *Id*. at 709-710.

III. STATUTORY GROUNDS

Respondents argue that the trial court clearly erred by finding statutory grounds to terminate their parental rights. We disagree.

To terminate parental rights, a trial court must find clear and convincing evidence of one or more statutory grounds supporting termination pursuant to MCL 712A.19b(3). Statutory grounds exist to terminate parental rights pursuant to MCL 712A.19b(3)(b)(*i*) and (b)(*ii*) if the trial court finds clear and convincing evidence that

> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
>
> (*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
>
> (*ii*) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

A trial court does not clearly err in terminating respondents' parental rights pursuant to subsections (b)(*i*) and (b)(*ii*) when both argue that they did not injure an infant and evidence "show[s] that the respondent or respondents must have either caused or failed to prevent the child's injuries." *In re Ellis*, 294 Mich App 30, 32-36; 817 NW2d 111 (2011). Rather, it is proper for a trial court to determine that one respondent caused the abuse and the other failed to prevent it when an infant "suffer[s] numerous nonaccidental injuries that likely occurred on more than one occasion [when] the parents lived together, shared childcare responsibilities, and were the child's sole caregivers." *Id*. at 35-36.

In this case, the trial court did not clearly err in determining that statutory grounds existed to terminate respondents' parental rights to all three children pursuant to MCL 712A.19b(3)(b)(*i*)

and (b)(*ii*). The trial court found that ZMSC suffered "a severe injury" while "in the care, custody, and control of both" respondents. Respondent-father testified that he and respondent-mother cared for the children; respondents offered no evidence that any other person cared for ZMSC. In light of the conflicting testimony of whether Dr. Allibalogun examined ZMSC's legs, the trial court could not determine when the injury occurred. Respondent-father testified that he was home just before respondent-mother took ZMSC to see Dr. Allibalogun, when respondent-mother brought ZMSC home, and in the morning before respondent-mother took ZMSC to see Dr. Melendez. Therefore, the injury may have occurred when respondent-father was home. Respondent-mother provided conflicting accounts of how ZMSC's injury occurred, but told others that she either dropped or threw ZMSC. Dr. Melendez described the injury as "highly suspicious." Dr. Brown testified that ZMSC's type of fracture was "very highly correlated with abuse," absent some form of "major trauma," and that a fall typically would not provide enough force to cause the injury. Therefore, the trial court further found that ZMSC's injury was not accidental; it was "purposely caused." ZMSC's suffering of this type of severe, unexplained, abuse in respondents' care allows the trial court to also terminate respondents' parental rights to the siblings JDC and RLC. Thus, we do not have a definite and firm conviction that the trial court made a mistake when it found clear and convincing evidence to terminate each respondent's parental rights pursuant to MCL 712A.19b(3)(b)(*i*) and (b)(*ii*). Because the trial court only needed to find one statutory ground to terminate parental rights, we do not consider whether the trial court clearly erred in making other statutory grounds determinations.

IV. BEST INTERESTS

Next, respondents argue that the trial court clearly erred when it determined that termination was in the children's best interests. We disagree.

Once a trial court has found statutory grounds to terminate parental rights, it must consider whether termination is in the child's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). The trial court should weigh all available evidence and consider many factors. *In re White*, 303 Mich App at 713-714. Factors include "the child's bond to the parent," "the parent's parenting ability," "the child's need for permanency, stability, and finality," *In re Olive/Metts*, 297 Mich App at 41-42, a child's safety and well-being, including the risk of harm if returned to the parent, *In re VanDalen*, 293 Mich App 120, 141-142; 809 NW2d 412 (2011), and "the possibility of adoption," *In re White*, 303 Mich App at 714. If the trial court determines by a preponderance of the evidence that termination is in a child's best interest, it should order termination. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

In this case, the trial court did not clearly err in determining that termination of respondent-mother's parental rights was in the children's best interests. McKinney testified that she believed termination was in the children's best interests in light of respondent-mother's inability to modify her parenting behavior between the time she injured JDC and the instant case, and the trial court cited her testimony in making its best-interest determinations. The trial court found that the children needed stability and permanency and could not find that in respondent-mother's home in light of the abuse that occurred to JDC and ZMSC. McKinney also testified that she could not "trust that the children would be safe in [respondent-mother's] care." CPS supervisor Matt Deming testified that ZMSC suffered a severe, unexplained, non-accidental injury while in respondent-mother's care, and the trial court also cited Deming's testimony when

making its best-interest determinations. Foster care specialist Emily Laperriere testified that the children were in a pre-adoptive home, and the trial court cited her testimony when it concluded that the children were adoptable. Therefore, we do not have a definite and firm conviction that the trial court made a mistake when it determined that termination of respondent-mother's parental rights was in the children's best interests.

Likewise, the trial court did not clearly err in determining that termination of respondent-father's parental rights was in the children's best interests. McKinney testified that respondent-father failed to protect his children from abuse and failed to get his children medical treatment. Again, the trial court found that the children needed stability and permanency that could not be found in respondent-father's home in light of the abuse that occurred. McKinney expressed concern that respondent-father may have been home when ZMSC sustained injury and further concern that respondent-father had not separated from respondent-mother. Deming testified that respondent-father would have been home when ZMSC sustained injury. And again, Laperriere testified that the children were in a pre-adoptive home. Therefore, we do not have a definite and firm conviction that the trial court made a mistake when it determined that termination of respondent-father's parental rights was in the children's best interests.

Respondent-father's argument that the trial court failed to consider his parenting ability, specifically his caring for and cooking for the children, does not change this conclusion. He also argues that the trial court failed to consider the children's bond to respondent-father, but points to no evidence in the record to support his assertion, contrary to his requirement to do so. See MCR 7.212(C)(7). Similarly, he points to no evidence in the record of JDC's preferences regarding termination. Because of this lack of evidence of JDC's bond to respondent-father or preferences, respondent-father's argument that the trial court erred in failing to consider JDC's individual best interests also fails. See *In re White*, 303 Mich App at 715-716.

V. LGAL ASSISTANCE

Finally, respondents argue that the LGAL provided their children ineffective assistance of counsel. However, we have previously held that a parent does not have standing to raise such an argument on behalf of their children, see *In re HRC*, 286 Mich App 444, 458; 781 NW2d 105 (2009), and we are bound by this published authority, see MCR 7.215(J)(1).

We affirm.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Thomas C. Cameron